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VIA HAND DELIVERY

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007


Re: *Original Affidavit of L. Russell Mitten;
Citizens/PPFAC; Docket No. E-01032C-00-0751*

Dear Sir/Madam:

Enclosed is the original and ten (10) copies of the affidavit of Mr. Mitten dated March 28, 2002. A faxed version of the affidavit was attached as Exhibit B to Citizens' Brief re Magruder Motion to Recuse.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By: 
Michael M. Grant


MMG:bo
Enclosure

ORIGINAL and **TEN** copies filed this
29th day of March, 2002, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

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Docket Control
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COPY of the foregoing mailed this 29th
day of March, 2002 to:

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Phoenix, AZ 85007

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3099-0039/1005664v1

AFFIDAVIT OF L. RUSSELL MITTEN

STATE OF CONNECTICUT)

County of Fairfield)

The undersigned affiant, being duly sworn on his oath, does hereby state the following:

1. My name is L. Russell Mitten and my business address is 3 High Ridge Park, Stamford, Connecticut 06905. I have been employed by Citizens Communications Company (formerly known as Citizens Utilities Company) ("Citizens") since July 1990. I currently serve as the company's Vice President – General Counsel and Secretary.

2. On September 28, 2000, Citizens' Arizona Electric Division filed an application with the Arizona Corporation Commission ("ACC") seeking approval (i) to change the Purchased Power and Fuel Adjustment Clause ("PPFAC") rate, (ii) to freeze and amortize over a period of three years the balance in the existing PPFAC Bank, (iii) to establish a new PPFAC Bank that would track power supply costs prospectively on a twelve-month rolling average basis, and (iv) to begin accruing carrying charges on the accumulated balance of over or under-recovered power supply costs (the "PPFAC Application"). That application, which was prepared and filed by Citizens' in-house legal counsel, was assigned Docket No. E-01032C-00-0751.

3. As stated in its application, during the summer of 2000 the AED experienced unprecedented increases in power supply costs – ranging from 50% to more than 160%. These cost increases were reflected in bills received from Arizona Public Service Company ("APS"), which provided power to the AED under a full-requirements Power Supply Agreement ("PSA") that the parties entered into in 1995.

4. To insure that it had been properly billed under the PSA, prior to filing its PPFAC Application the AED initiated a three-phase investigation of (i) all relevant billing data, (ii) the procedures used in computing the charges that were reflected in APS' bills to Citizens, and (iii) the generation resources used by APS to serve the AED's load. The initial phase of this investigation was completed by the AED prior to the filing of its application. The second and third phases were to be completed subsequent to that filing. In addition, the AED began a legal review of the PSA to determine if the increased power costs that had been billed by APS were consistent with its rights and obligations under that agreement.

5. In mid to late October 2000, I personally contacted Michael M. Grant, Esq., of the law firm of Gallagher & Kennedy, P.A., to request that he assume the role as lead counsel for the AED in processing and prosecuting its

PPFAC Application. During our initial conversation regarding his possible representation of the AED, Mr. Grant advised me that his firm had served in the past and was currently serving as counsel to APS or its affiliated companies on various legal matters. In addition, he advised me that one of his partners, Michael L. Gallagher, served on the board of directors of Pinnacle West Capital Corporation ("Pinnacle West"), APS' parent company. Because Citizens' interests under the PSA were potentially adverse to those of APS, Mr. Grant stated that he could not accept the assignment I had offered him until all possible conflict of interests issues had been fully addressed within his law firm and until all waivers required by the Code of Professional Responsibility had been obtained from APS and its affiliates. At that point, all discussions regarding Mr. Grant's representation of the AED in connection with its PPFAC application ceased pending resolution of the conflict of interests issues.

6. During the next few weeks Mr. Grant or other attorneys in his firm reviewed these conflict of interests issues, both within his law firm and with representatives of APS and its affiliates. Following that review, APS concluded that it would grant a conflict of interest waiver that would allow Mr. Grant and his law firm to represent Citizens and its affiliates, including the AED, both generally and with respect to matters where Citizens' interests may be adverse to those of APS and its affiliates (such as the PPFAC Application); provided, that neither Mr. Grant nor Gallagher & Kennedy would be allowed to act as counsel for Citizens or its affiliates (i) in any **legal action** directly adverse to APS or its affiliates or (ii) in any negotiation between Citizens and APS with respect to the PSA or any similar long term power supply agreement. Following his receipt of this waiver orally, Mr. Grant agreed to represent Citizens in the pending Commission proceeding involving the PPFAC Application and entered an appearance on behalf of the AED. The waiver was subsequently confirmed in writing by both Pinnacle West/APS and Citizens through their respective general counsels.

7. At no time has Citizens or the AED sought or received advice from Mr. Grant or any other lawyer at Gallagher & Kennedy regarding the interpretation of or any possible claims or causes of action arising from the PSA. Citizens did seek legal advice regarding potential claims and the possibility of taking legal action against APS at the Federal Energy Regulatory Commission or in the federal courts, but it sought that advice only from two Washington, DC, based law firms: Wright & Talisman, P. C., and Troutman Sanders, LLP. Citizens also sought advice regarding state law claims and the possibility of initiating an action against APS in the Arizona courts, but it sought that advice solely from the law firm of Brown & Bain.

8. Because Pinnacle West, on behalf of itself and its affiliates, has knowingly consented to Mr. Grant's representation of Citizens and the AED in a broad category of legal matters – which unquestionably includes the pending PPFAC Application – I believe it would be both unnecessary and unfair for the Commission to disqualify him from doing so. Applicable ethical rules governing


the practice of law in Arizona allow for current and former clients to grant conflict of interests waivers, provided the waiver is knowingly given "after consultation." Here, Pinnacle West and its affiliates have thoroughly considered all conflict of interests issues and, after consulting with knowledgeable and experienced legal counsel, have concluded that the waiver adequately serves and protects their respective interests.

9. Moreover, disqualifying Mr. Grant at this late date would be especially harmful and disadvantageous to Citizens. Mr. Grant has represented Citizens in the pending Commission proceeding for nearly a year and a half. During that time he has learned a great deal about the company's plight and he has been intimately involved in preparing and presenting Citizens' case. If the AED is forced to replace Mr. Grant, it will likely take several weeks to find a qualified replacement and allow that replacement adequate time to prepare for the upcoming hearing and the briefing schedule that will follow thereafter. All the while Citizens – and its shareholders – will be forced to absorb carrying costs, which the company estimates are approximately \$750,000 per month, on the existing PPFAC bank balance. In addition, because the AED must continue to purchase power to keep the lights and, as summer approaches, the air conditioners on within its service area, the balance of uncollected power costs in the PPFAC bank continues to grow. This is a burden the shareholders of Citizens should not be required to bear – especially when no legally recognized and protected interests would be jeopardized or conflicted if the case goes forward as scheduled. Principles of neither law nor equity mandate – or even warrant – the disqualification of Mr. Grant as Citizens' counsel or the delay in this proceeding that such a disqualification would occasion.



L. RUSSELL MITTEN
VICE PRESIDENT – GENERAL COUNSEL
& SECRETARY

SUBSCRIBED AND SWORN to before me
this 28th day of MARCH, 2002.



Notary Public

MILDRED L. HUDSON
NOTARY PUBLIC

1005098v MY COMMISSION EXPIRES MAY 31, 2004